

APPEAL NO. 030746
FILED MAY 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 19, 2003. The hearing officer determined that the respondent/cross-appellant's (carrier) insured, MDH, is not the appellant/cross respondent's (claimant) employer for purposes of the 1989 Act; that although the claimant sustained a work-related injury, the injury is not compensable and that the claimant did not have disability because MDH is not the employer; and that, even though MDH was not the employer on the date of the injury, since the carrier initially accepted liability for the injury and did not dispute compensability until June 29, 2002, the carrier is liable for benefits that would have accrued through June 29, 2002, as if the claim had been compensable. The claimant appeals the compensability and disability determinations and contends that the carrier did not dispute compensability until July 29, 2002. The carrier appeals the determination that it is liable for benefits that would have accrued through June 29, 2002, as if the claim had been compensable. As the determination that MDH is not the employer for purposes of the 1989 Act has not been appealed by either party, it has become final pursuant to Section 410.169.

DECISION

Affirmed in part; reversed and rendered in part.

The pivotal issue in this case is whether the carrier is liable for benefits that would have accrued through June 29, 2002, given the fact that the carrier's insured, MDH, was not the employer on the date of the claimant's injury. Coverage is a threshold requirement for establishing liability of a carrier. Texas Workers' Compensation Commission Appeal No. 022268-s, decided October 30, 2002; Texas Workers' Compensation Commission Appeal No. 960500, decided April 19, 1996. Where the claimant is determined not to be an employee of the insured on the date of injury, as in this case, the carrier cannot be held liable for the claimed injuries under the waiver provision of Section 409.021, as a matter of law. Appeal No. 022268-s, citing Houston General Insurance Co. v. Association Casualty Insurance Co., 977 S.W.2d 634 (Tex. App.-Tyler 1998, no pet. h.) Accordingly, the hearing officer erred in determining that the carrier is liable for benefits that would have accrued through June 29, 2002, as if the claim had been compensable. That determination is hereby reversed and a new decision rendered that the carrier is not liable for benefits.

As coverage is a threshold matter, in light of the above holding, the hearing officer did not err in finding that the claimant did not have a compensable injury and did not have disability, because he was not an employee of MDH.

The true corporate name of the insurance carrier is **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**JAMES W. FISHER
8111 LBJ FREEWAY
DALLAS, TEXAS 75251.**

Chris Cowan
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge